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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,624	12/08/2003	David L. Dinwoodie	4044-01400	4260
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CONLEY ROSE, P.C. 5601 GRANITE PARKWAY, SUITE 750 PLANO, TX 75024			EXAMINER ROSEN, NICHOLAS D	
			ART UNIT 3625	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,624

Applicant(s)

DINWOODIE, DAVID L.

Examiner

Nicholas D. Rosen

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-34 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-13, and 35-40 is/are rejected.
- 7) ☒ Claim(s) 3, 5 and 14-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :8/6/2004, 8/11/2004, 3/11/2005, and 8/12/2005.

DETAILED ACTION

Claims 1-40 have been examined.

Claim Objections

Claims 1-11 are objected to because of the following informalities: There should be an "and" at the end of the third line of claim 1. Appropriate correction is required.

Claim 3 is objected to because of the following informalities: In the second line of claim 3, "a time data" should be "time data" or "a time datum." Appropriate correction is required.

Claims 14-21 are objected to because of the following informalities: In the fifteenth line of claim 14 (second last line), "different than" should be 'different from'. Appropriate correction is required.

Claims 19 and 21 are objected to because of the following informalities: In the last line of claim 19, "whether the accept or reject" should be "whether to accept or reject." Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 35, 36, and 37 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Glasspool (U.K. Patent Application Publication 2382162 A). As per claim 35, Glasspool discloses a system for conducting an auction with remote bidders, the system comprising: an auction system operable to maintain information related to a subject of an auction and further operable to communicate in at least one direction information related to the subject of the auction on a first network, a second network, and a third network, and operable to broadcast information related to the subject of the auction on at least one of the first network and the second network (Abstract; page 1, lines 3-5; page 2, line 31 through page 3, line 8; page 6, lines 9-31; page 16, line 32, through page 17, line 13; page 18, line 23, through page 19, line 9); a first remote bidder in communication with the auction system via a first network and operable to communicate a first bid to the auction system including a tag related to a price for the subject of the auction, the auction system using at last the tag to determine whether to accept the first bid (Figures 1 and 2; page 21, line 34, through page 22, line 19), and at least a second remote bidder in communication with the auction system, the system operable to communicate a second remote bid to the auction system via a second network (ibid.; and page 22, line 30, through page 24, line 21). Glasspool is not fully explicit that the first bidder communicates the first bid via a first network, and the second bidder communicates the second bid via a distinct second network, but does disclose, "A second bidder 12 then submits a fixed bid of £4 over a second input channel, for example by telephone (page 22, lines 10-11), and discloses that preferably at least one bid is received over the Internet, e.g., by email or in a chat

room, and at least one bid is received over the telephone network, e.g., by voice call or SMS (page 6, lines 9-31). Hence, it would have been at the least obvious for the first bidder to communicate the first bid via a first network, and the second bidder to communicate the second bid via a distinct second network, such a scenario being described as preferable by Glasspool, and serving the stated advantage of allowing more bidders to participate in the auction.

As per claim 36, Glasspool discloses a first network using at least a portion of the Internet, and a first remote bidder system operable to communicate via the Internet (page 6, lines 9-14; page 18, lines 29-35).

As per claim 37, Glasspool discloses a third network operable to communicate a real-time video transmission related to the subject of the auction (page 10, lines 7-24; page 18, lines 29-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6-13

Claims 1, 2, 4, 6, 7, 8, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris et al. (U.S. Patent 6,677,858) in view of Maybury ("Boot Camp; Online Auctions Part One"). As per claim 1, Faris discloses a system for

conducting interactive auctions with remote bidders, comprising: an auction system operable to maintain information related to a subject of an auction, the auction system establishing a price at which the subject of the auction is offered (column 55, line 58, through column 56, line 16); and a remote bidder system operable to communicate a bid including bid information to the auction system, the auction system using at least a portion of the bid information to accept the bid if it is timely, and reject the bid if the bid is not timely (column 59, lines 6-46). Faris does not disclose that the bid accepts an offer for the subject of the auction at the price established by the auction system, but online auctions where bids are of this nature are well known, as taught by Maybury (whole article, especially paragraph beginning, "At the end of the auction"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the bid to accept an offer for the subject of the auction at the price established by the auction system, for the obvious advantages of enabling bidders to participate in auctions with some hope of success, and of enabling auction systems to provide due notice of required bids, with all parties being spared the wasted trouble and effort of bids that could not be accepted, or would not win.

The auction system described by Maybury would normally accept the bid where the price of the auction had not changed, and in many cases reject it if the price for the subject of the auction had changed, that is, where a higher bid submitted by someone else had resulted in a current minimum acceptable bid higher than the amount submitted by a first bidder in the belief that it was the minimum acceptable bid.

Moreover, claim 1 merely recites an auction system and a remote bidder remote system

operable to do certain things, with no requirement that they actually carry these actions out. The "operable to" language is held to be merely a statement of intended purpose, and leaves the substantive limitations of the claim as met by prior art auction systems and remote bidder systems which could be used for the intended purpose, as Faris and Maybury could have been, regardless of whether they were so used.

As per claim 2, Faris discloses that the auction system is operable to maintain a time related information associated with the price of the subject at a time during the auction (column 59, lines 6-17) and that the bid information includes a time related component comparable to the time related information maintained by the auction system (column 59, lines 18-46). Faris's auction server matches bids and offers, rather than necessarily maintaining a single price for the subject of the auction, but Maybury teaches maintaining a price (whole article, especially paragraph beginning, "At the end of the auction"), making this obvious for the reasons set forth with regard to claim 1 above. Furthermore, as with claim 1, "operable to maintain" is held not to require that the system actually does maintain the price and other information, and would therefore not make the claim patentable.

As per claim 4, Faris does not expressly disclose that the bid information includes a price component related to the price of the subject of the auction when the bid was made by the remote bidder system, but Maybury teaches that the bid information includes a price component related to the price of the subject of the auction when the bid was made by a remote bidder (whole article, especially paragraph beginning, "At the end of the auction"). Hence, it would have been obvious to one of

ordinary skill in the art of electronic commerce at the time of applicant's invention for the bid includes a price component related to the price of the subject of the auction when the bid was made by the remote bidder system, for at least the obvious advantage, as taught in Maybury, of making at least the minimum acceptable bid, rather than wasting time and effort on a bid that will definitely not result in purchase of the subject of the auction.

As per claims 6 and 7, Faris discloses that the bidder system and auction system communicate over a network, which can be the Internet (e.g., column 57, lines 28-54).

As per claim 8, Faris teaches what can be regarded as current bids for the subject of the auction (column 59, lines 6-46). Furthermore, Maybury teaches that the price is a current bid for the subject of the auction (whole article, especially paragraph beginning, "At the end of the auction"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the price to be a current bid for the subject of the auction, for the stated advantage, as in Maybury, of enabling online auctions to take place, letting people turn their unwanted goods into cash, or pick up real bargains.

As per claim 9, Maybury teaches that the price is an asking bid for the subject of the auction (whole article, especially paragraph beginning, "At the end of the auction"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the price to be an asking bid for the subject of the auction, for the stated advantage, as in Maybury, of enabling online

auctions to take place, letting people turn their unwanted goods into cash, or pick up real bargains.

As per claim 10, Faris discloses that the remote bidder systems are computer systems (column 55, line 58, through column 56, line 16).

As per claim 11, Faris does not expressly disclose that the remote bidder system is a wireless device communicating in at least partially a wireless manner with the auction system, but wireless devices are well known, as taught by Faris (e.g., Abstract). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the remote bidder system to be such a wireless device, for at least the obvious advantage of enabling bidders to place bids from wherever might be convenient, rather than having to stay by their relatively immobile home or office computers.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris and Maybury as applied to claim 11 above, and further in view of official notice. As per claim 12, Faris does not disclose that the wireless device is a personal digital assistant, and as per claim 13, Faris does not disclose that the wireless device is a mobile telephony device, but official notice is taken that personal digital assistants are well known (as per claim 12) and that mobile telephony devices are well known (as per claim 13). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the wireless device to be a personal digital assistant or a mobile telephony device, for the advantage set forth in the rejection of claim 11 above.

Claims 38-40

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glasspool (U.K. Patent Application Publication 2382162 A) as applied to claim 35 above, and further in view of official notice. Glasspool does not disclose that the second remote bidder is operable to communicate the second bid using a dual-tone multi-frequency signal, but does disclose communicating bids by telephone (page 6, lines 9-31; page 22, lines 10-11; page 23, lines 15-19), and official notice is taken that it is well known to communicate information over the telephone network using dual-tone multi-frequency signals. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the second remote bidder to be operable to communicate the second bid using a dual-tone multi-frequency signal, for the obvious advantage of transmitting numbers (e.g., prices) and other information using a telephone keypad, avoiding the possible ambiguities and delays of using voice.

Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glasspool (U.K. Patent Application Publication 2382162 A) as applied to claim 35 above, and further in view of Faris et al. (U.S. Patent 6,677,858). As per claim 39, Glasspool does not disclose that the tag related to a price for the subject of the auction comprises a time data tag related to a price for the subject of the auction, but Faris teaches bids including time-stamps at the client machines (column 59, lines 18-46). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the tags to comprise time data tags,

for the stated advantage of compensating for any differences between network latencies of competing bidders.

As per claim 40, Glasspool does not disclose that the auction system uses at least a latency component to determine whether to accept a bid, but Faris teaches an auction system using at least a latency component to determine whether to accept bids (column 59, lines 18-46). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the auction system to do this, for the stated advantage of compensating for any differences between network latencies of competing bidders.

Allowable Subject Matter

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Faris et al. (U.S. Patent 6,677,858) and Maybury ("Boot Camp; Online Auctions Part One") make the system of claim 1 and claim 2 obvious, as set forth above. Further, Faris discloses that the time related information associated with the price of the subject matter is time data associated with the time during the auction when the subject matter is auctioned for a price (column 59, lines 17-46). However, Faris does not disclose that the auction system uses the time data to determine whether the price of the subject of the auction has changed, nor does any other prior art of record quite

teach doing this. There is no motivation in Faris, the other prior art of record, or the knowledge generally available to one of ordinary skill in the art to graft using the time data to determine whether the price of the subject of the auction has changed on to Faris's system, which is directed to determining whether the proper time for submitting bids had begun or ended at the time a bid was sent out and timestamped. Allowability is conditional on claim 3 being rewritten in independent form, and rewritten in such fashion as to make its elements unambiguous claim limitations, rather than potentialities or statements of intended purpose.

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Faris et al. (U.S. Patent 6,677,858) and Maybury ("Boot Camp; Online Auctions Part One") make the system of claim 1 obvious, as set forth above. Faris further discloses that the bid information includes a first data indicative of an offer for from the remote bidder system for the subject of the auction and a second data related to a time associated with the price of the auction (column 55, line 58, through column 56, line 30; column 59, lines 6-46). However, Faris does not disclose that the auction system uses the second (time-related) data to determine whether the price of the subject of the auction has changed, nor does any other prior art of record quite teach doing this. There is no motivation in Faris, the other prior art of record, or the knowledge generally

available to one of ordinary skill in the art to graft using the time data to determine whether the price of the subject of the auction has changed on to Faris's system, which is directed to determining whether the proper time for submitting bids had begun or ended at the time a bid was sent out and timestamped. Allowability is conditional on claim 5 being rewritten in independent form, and rewritten in such fashion as to make its elements unambiguous claim limitations, rather than potentialities or statements of intended purpose.

Claims 14-21 are objected to, but would be allowable if corrected.

The following is an examiner's statement of reasons for potential allowance: The closest prior art of record, Faris et al. (U.S. Patent 6,677,858), discloses a method for remote auction bidding, comprising: communicating an auction system price to a remote bidder system (column 55, line 58, through column 56, line 21); and transmitting a message related to the subject of the auction from the remote bidder system to the auction system (column 56, lines 17-30; column 59, lines 17-46). Faris does not precisely disclose updating an auction system with an auction system current price established by the auction system for a subject of an auction, or messages from bidders including bid offers acknowledging acceptance by the remote bidder system of the auction system current price for the subject of the auction, but these are well-known features of online auctions, such as those described Henry ("But Can You Get It Wholesale?"), and by Maybury ("Boot Camp; Online Auctions Part One"). Faris discloses accepting or rejecting a bid according to the time at which the bid is sent, and

the current price of a subject of an auction may change over time, but neither Faris nor any other prior art of record discloses accepting, by the auction system, the bid offer where a then current bid price maintained by the auction server for the subject of the auction is the same as the remote bidder system current price; and rejecting, by the auction system, the bid offer where a then current bid price maintained by the auction server for the subject of the auction is different from the remote bidder system current price.

In a typical online auction system, a bid may be accepted or rejected according to whether the price has changed, and whether the price change is sufficient; e.g., if John Doe, a bidder, sees that the displayed by bid for an item is \$100, he can submit a bid of \$101, and his bid will be accepted if the previous high bid is still \$100 when his bid is processed at the auction server, but not accepted if someone else has bid \$102 before his bid is received and processed. In such a situation, however, it is not the fact of the current price maintained by the auction system being the same as or different from the remote bidder system current price which is key. If, by the time John Doe's \$101 bid is received and processed, someone else has submitted a bid for \$100.50, the current price maintained by the auction system will be different from the remote bidder system current price of \$100, but John Doe's \$101 bid would presumably still be accepted.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 22-34 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Faris et al. (U.S. Patent 6,677,858), discloses a method for remote auction bidding, comprising: communicating an auction system price to a remote bidder system (column 55, line 58, through column 56, line 21); and transmitting a message related to the subject of the auction from the remote bidder system to the auction system (column 56, lines 17-30; column 59, lines 17-56). Faris does not precisely disclose updating an auction system with an auction system current price established by the auction system for a subject of an auction, or messages from bidders including bid offers acknowledging acceptance by the remote bidder system of the auction system current price for the subject of the auction, but these are well-known features of online auctions, such as those described Henry ("But Can You Get It Wholesale?"), and by Maybury ("Boot Camp; Online Auctions Part One"). Faris discloses accepting or rejecting a bid according to the time at which the bid is sent, and the current price of a subject of an auction may change over time, but neither Faris nor any other prior art of record discloses accepting, by the auction system, the bid offer where the auction system current price for the subject of the auction has not changed; and rejecting, by the auction system, the bid offer where the auction system current price for the subject of the auction has changed.

In a typical online auction system, a bid may be accepted or rejected according to whether the price has changed, and whether the price change is sufficient; e.g., if John Doe, a bidder, sees that the displayed by bid for an item is \$100, he can submit a bid of \$101, and his bid will be accepted if the previous high bid is still \$100 when his bid is processed at the auction server, but not accepted if someone else has bid \$102 before his bid is received and processed. In such a situation, however, it is not the fact of the price having changed, or not changed, which is key. If, by the time John Doe's \$101 bid is received and processed, someone else has submitted a bid for \$100.50, the price has changed, but John Doe's \$101 bid would presumably still be accepted.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Statement Regarding IDS's

The Information Disclosure Statements of August 6, 2004, and August 11, 2004 both list U.S. Patent 5,835,896 with Fujisaki as patentee. In fact, the inventors of this patent are Fisher et al. Examiner has therefore not initialed this patent in the IDS's, but has made it of record under the proper name; it discloses a method and system for processing and transmitting electronic auction information.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Faris et al. (U.S. Patent 6,903,681) disclose a global synchronization unit for time and space stamping of input data elements.

Abeshouse et al. (U.S. Patent Application Publication 2002/0087456) disclose a method, apparatus, and system for synchronizing timing of an auction through a computer network. Nassiri (U.S. Patent Application Publication 2002/0116320) disclose a real-time competitive method of auction using an auctioneer. Rackson et al. (U.S. Patent Application Publication 2002/0165817) disclose multiple auction coordination method and system. Goodwin et al. (U.S. Patent Application Publication 2003/03220867) disclose systems and methods for trading and originating financial products using a computer network. Peterffy (U.S. Patent Application Publication 2004/0254804) disclose a price improvement processor for electronic trading of financial instruments. Glasspool (U.S. Patent Application Publication 2005/0080707) discloses a data processing system and method. Gill (U.S. Patent Application Publication 2007/0226118) discloses an auction bidding method.

Shoju et al. (JP 11066186 A) disclose a compound radio auction method.

The anonymous article, "LIFFE's APT Trading Systems Slated to Go Live in 1989," discloses a system where bids and offers are accepted only at the current best price. Henry ("But Can You Get it Wholesale?") discloses online auctions.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas D. Rosen

NICHOLAS D. ROSEN
PRIMARY EXAMINER

December 6, 2007